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Wilcox, Delos Franklin

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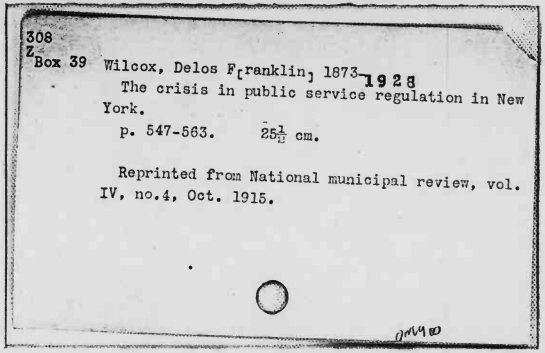
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THE CRISIS IN PUBLIC SERVICE REGULATION IN NEW YORK

BY DELOS F. WILCOX, PH.D.[1]
New York

WHAT the governors of the state of New York since Hughes have done to the public service commissions is enough to make the angels weep. The commissions were established in 1907 for the purpose of correcting the unspeakable abuses in the management of street railway, gas and electric companies which had developed, especially in New York City, until the stench of them reached to high heaven.

The chief frailties of human nature are well known. It was easy to foresee, and is still easier to after-see, the chief weaknesses of the commission movement. It was clear that if the commissions should come to be manned by men who were politicians in the usually accepted meaning of that term, their efficiency would be destroyed and they would merely get in the way of constructive progress. A politician in public office may be defined as a man who has his mind on something else, while he goes through the motions of performing his official duties; and obviously, with so difficult, complex and technical a task as that of the public service commissions, a politician in such an office would be an unspeakable calamity.

Moreover, the experience of the country with city councils, state legislatures, congress, the railroad commissions and even the courts, had been such as to make it easy to see the imminent danger that these new offices would come to be filled with men who, either corruptly or "honestly," would think the thoughts of the corporations which they were set to regulate, and in effect would assume their own function to be the

[1] Other articles by Dr. Wilcox in the NATIONAL MUNICIPAL REVIEW are as follows: How the Chicago and Cleveland Street Railway Settlements Are Working Out, Vol. I, p. 630; The New York Subway Contracts, Vol. II, p. 375; Municipal Home Rule and Public Utility Franchises, Vol. III, p. 13; Street Railway Re-settlements and Negotiations for Municipal Ownership, Vol. III, p. 745.

protection of the corporations not[illegible]indiscriminating popular wrath, but from the very law itself.

From the standpoint of the conservatives there was the countervailing danger that shallow and flighty radicals might be appointed to the commissions and "play hob" with the solid investments of the people. This danger is a legitimate bugaboo that has to be thought down as the result of experience and observation. Doubtless if the commissions had the final power to do harm to legitimate investments, the appointment of unsound radicals to the commissionerships might easily prove to be a frightful calamity, not only to investors, but to the community as a whole. But all our political experience in this country goes to show that corporate interests know well how to take care of themselves in the matter of appointments to public office, and also that official responsibility tends to generate conservatism in those who have been ignorantly radical. Moreover, the great powers given to the commissions are not final but are subject to the ultimate arbitrament of the courts.

Another danger that could easily be foreseen was the possible inability of the appointing power to induce men of adequate stature to accept the heavy obligations of work and responsibility necessarily attaching to these offices. It was notorious then, as it still is, that the corporations, which, from the possession of monopoly privileges, are enabled to tap the pockets of the people daily, monthly or quarterly for the price of certain necessities of urban civilization, have more ready cash to spend and more willingness to spend it in subsidizing brains, than the state itself has. It was to be expected that the effort to bring public service corporations under closer supervision would result in the multiplication of their defensive operations and, consequently, in an enormous increase in their demand for high-priced experts in the legal, engineering and accounting professions. The corporations understood, and we all are coming to understand, that subsidized experience and intellectual adroitness can mold to their own purposes honest mediocrity in public office, or at the very least, can so muddle it as to prevent any effective action inimical to the interests in whose service brilliancy is enlisted.

Another danger, the corollary of this one, could also be readily foreseen, namely, that able men, having received their training in the commissions, would subsequently be "picked off" by the corporate interests to serve the other side.

It was easy to see that in so complex and difficult a work as that of public utility regulation, continuity of personnel, other things being equal, would be one of the most important factors of success. In the great city of New York, in 1907, when the Hughes commission was established, it is doubtful whether there were five men who were immediately competent to perform the functions of the commission. Governor Hughes had to take the best men that he could get, according to the lights he had, and

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then these men had to be educated for their jobs by their jobs. Men for this position need not only great native ability, wide experience, public-mindedness and almost unlimited capacity for intense mental application, but, having all these things, they are still unqualified for their work until they have had their wits sharpened in the stress of actual public regulation.

There was another danger in the establishment of state public service commissions which might have been foreseen and in certain communities was foreseen. I refer to the danger of inducing political atrophy in municipalities by depriving them in whole or in part of the function of control which they had previously exercised over local streets and local utility services. This rather subtle danger was not fully appreciated in states like New York, where municipal home rule has long been a matter of political clamor rather than of administrative experience. The reaction which has recently set in in Wisconsin, Pennsylvania, Washington, Illinois, Minnesota and other states against the idea of exclusive regulation by state commissions, is a lively evidence of this danger.

It might appear, from this recital of the perils foreseen or since seen, which were inherent in the public service commission movement from the beginning, that public service regulation is too dangerous to be tried; that the remedy it offers is more deadly than the disease it fails to cure. It may be safely said, however, that the public service commission movement had to be started and still has to go on, in spite of everything, until a substitute is provided that will bring better results.

Governor Hughes well knew that in the creation of new commissions with vastly increased regulatory powers, the state must take a certain risk. He knew that if the commissions fell into the hands of the politicians and became either instruments for the blackmail of the corporations or merely their bulwarks against the public desire for adequate service at low rates, it might be said of the state of New York, as it was of the man in the Scriptures when the unclean spirit, having left him, returned with seven other spirits more wicked than himself: "The last state of that State is worse than the first." Hughes knew especially that if the public service commission for the New York City district became an adjunct of Tammany government it would be a colossal failure. But the times were critical. Something big had to be done. Therefore, the governor took all the precautions that seemed to him possible to establish the new commissions on a high non-political basis, with prospective continuity of tenure and with all the facilities necessary for building up an efficient technical organization to protect alike the interests of the public and the interests of the corporations engaged in rendering public utility service.

The public service commissions law gave the commissioners five-year terms and yearly salaries of $15,000. They were made appointive by the governor and senate and removable by the governor alone for "ineffi-

ciency, neglect of duty or misconduct in office," but in a case of contemplated removal, the charges against a commissioner were to be presented to him and he was to be given an opportunity of being heard publicly in person or by counsel in his own defense upon not less than ten days' notice. If, after this, the commissioner was removed, the governor was required to file in the office of the secretary of state a full statement of the charges and of his findings in regard to them, with a complete record of the proceedings.

Governor Hughes began by appointing commissioners whose integrity was above suspicion and who were not actively connected with the political machines of either party. The terms of the commissioners in each district were so arranged that in his second administration Governor Hughes would have the reappointment, first, of a Republican and then, in his last year, of a Democrat. It was also arranged that the first one to go out of office after the close of the second Hughes administration should be a Democrat It seemed reasonable to assume that the example of Hughes in the last year of his office, in reappointing a Democrat for a full term, would have sufficient weight to give a strong impetus toward a tradition of permanency in the tenure of the commissions. It seemed that his successor, if a Republican, could not do less than follow his example in reappointing a Democratic commissioner; while, on the other hand, if Hughes were to be succeeded by a Democrat, it would be easy for the new governor to reappoint a man of his own party and extremely difficult for him not to do so if the man's record was good and the commission had public sentiment behind it. Hughes also tried to forestall the possibility of Tammany control of the New York City commission by keeping the appointment of the commissioners in the governor's hands, although the commission was made the successor of the local rapid transit board and was given extraordinary powers as the representative of New York City. Moreover, the special difficulty of the regulatory problems in New York City, as well as the overshadowing importance of the local problem of rapid transit development, made it seem expedient to put upon New York City as a municipality the burden of paying the major portion of the commission's expenses. Governor Hughes deliberately and with cunning aforethought violated the principle of municipal home rule in relation to this commission. As later events have proved, in this respect he sowed the wind of expediency and the city is reaping the whirlwind of grief.

When the appointments to the original commission were announced in 1907, many New Yorkers had a feeling of disappointment, believing that the governor had not named as strong a body of men as he should have chosen. On the whole this disappointment was justified by the event, although it would be difficult even now to point out five other men whom the governor might have selected at the time with any assurance of better

results. William R. Willcox, who was selected as chairman, had been postmaster of New York for a number of years and prior to that a park commissioner. He was not exactly a politician, although he had ambitions in politics. He was not a machine man, although he was not known as an aggressive reformer. He classified himself while on the commission as a conservative-radical. The other appointees were Milo R. Maltbie, a doctor of philosophy in political science and a practical student of civic and public utility problems; Edward M. Bassett, a well-known Brooklyn lawyer and long-time personal friend of Governor Hughes, who had in his early life had experience as a promoter of public utilities and later had achieved distinction as a citizen of Brooklyn, where he had served as a member of the board of education and had been elected to congress for one term; William McCarroll, a business man of long experience and high standing, who at the time was president of the Board of trade and transportation and of the Manufacturers' association; and John E. Eustis, a lawyer who had participated in reform movements and was well known for his rugged and out spoken honesty.

Chairman Willcox and Dr. Maltbie lived in Manhattan. Mr. Bassett and Mr. McCarroll were Brooklynites. Mr. Eustis hailed from The Bronx, which is the portion of the city north of the Harlem river. The borough of Queens and the borough of Richmond, large in area but comparatively small in population, were without representation on the commission. While it was not intended that the commission should be made up of men representing primarily the local interests of the several boroughs of the city, nevertheless the boroughs other than Manhattan came to look upon the representatives they had as more or less bound to fight for borough interests. This was especially true of The Bronx, which has for many years exhibited vociferous and persistent local individuality. It has special interests and has been clamorous for them. In transit matters it is the spoiled child of New York. This peculiarity of The Bronx was to a certain extent embodied in the character of Commissioner Eustis and has to be taken into consideration, along with his individual characteristics, in estimating his qualifications for the work of the public service commission. It appeared that in matters affecting other boroughs than his own he was often willing to back up radical action proposed by other commissioners. But when it came to The Bronx, all theories had to go by the board if their application to the problem in hand threatened to interfere with local expansion of public utility service according to the demands of The Bronx real estate "rooters," who seemed to comprise almost the entire population of the borough.

Soon after the commission got to work, certain differences of temperament and sympathies developed among the commissioners. Dr. Maltbie was the most radical of the five and Mr. Bassett, though inclining toward conservatism at first, proved to be the type of man who is educated

by his job. More and more, Maltbie and Bassett lined up as the progressive members of the commission and McCarroll and Eustis as the conservatives, with Chairman Willcox holding the balance of power and harmonizing as far as possible the differences among his colleagues. Sometimes he voted radical and sometimes conservative, until, in the storm and stress of the rapid transit negotiations four or five years later, he became all conservative.

In his second term as governor, Hughes reappointed Mr. Eustis and Dr. Maltbie for full terms of five years each. Then came the political overturn following the retirement of Hughes from New York politics and the struggle between William Barnes and Theodore Roosevelt for control of the Republican party in the Empire state. In January, 1911, John A. Dix, the nominee of Charles F. Murphy, assumed the reins of executive government at Albany. In the fullness of his wisdom he launched an attack upon what he chose to style "government by commission," but his own special commissioner appointed to investigate the first district commission reported that it was doing very well with the vast and complex problems under its jurisdiction and specifically suggested that in view of the uncompleted rapid transit negotiations, it would be inadvisable to make any immediate change in the personnel of the commission. In the meantime, Mr. Bassett's term had expired. Mr. Bassett was a Democrat and had unquestionably become one of the ablest and most efficient members of the commission. However, he was beginning to incur the hostility of some of the powerful public service corporations under the commission's jurisdiction. Governor Dix, both on account of his business and social connections and on account of his political alliances, could not be expected to appoint public service commissioners against the protest of the corporation interests in New York City. After several months of painful wabbling, Dix finally evolved the happy thought of injecting more "energy" into the commission by appointing in place of Mr. Bassett the Honorable J. Sergeant Cram, chairman of the Tammany general committee, whose great distinction in New York was that he had served for many years as the social mentor of Boss Murphy.

How this appointment was received in New York may be judged by the fact that the editors of the New York *Times*, who are by no means distinguished for the laconic nature of their comments upon current political events, were reduced in their final effort on this occasion to the space of two short paragraphs, as follows:

CRAM

Governor Dix's appointment of J. Sergeant Cram to the public service commission of the first district would be scandalous if it were not so grotesque. All men who have a capacity for indignation for a public wrong will want to say something about the appointment, but what can they say? In the case of Cram strong language would be inappropriate.

It is probably the most absurd appointment ever made by a governor of the state of New York. And yet Governor Dix has the hardihood to say that "Mr. Cram understands, as few men do, the rapid transit needs of New York City."

The retirement of Bassett and the appointment of Cram would never have been possible, even as the result of a political overturn at Albany, if the Hughes commission had not made mistakes and in many respects proved a disappointment to the over-expectant people of New York City. A certain lack of energy and failure to grasp the big issues, as well as some mistakes in detail, had accentuated the inherent impossibility of bringing about the millenium in transit conditions in New York overnight.

The appointment of Cram in place of Bassett was regarded by those who knew and cared for the public service idea back of the Hughes commission, as the most stupid and wicked blow that a blundering chief executive could possibly strike at a complex instrument of government. It was as if an ignoramus, picked up from the street and given the job of driving a modern motor truck, had expressed his prejudice in favor of the old-fashioned one-horse dray and his inability to understand the new vehicle by heaving a rock into the transmission. It was one of those tragedies of democracy which tend to discourage the most hopeful and to fill with joy that excellent group of citizens who are constantly croaking about the inefficiency of government and the uselessness of public endeavor.

Mr. Cram, as a commissioner, fulfilled the expectations that greeted his appointment. Being unfitted by his temperament and training for the continuous mental effort required of a public service commissioner, Mr. Cram avoided the issue by denouncing the meetings of the committee of the whole, in which the commission did its work, as "star chamber proceedings," and by refusing to attend them. Curiously enough, however, in playing for political position, he lined up with Dr. Maltbie on the radical side of some of the big issues, notably the subway contracts. The weeping of the angels over Governor Dix's stupidity was turned into laughter at the ridiculous spectacle of Cram, the embodiment of Tammany indolence and craftiness, in alliance with Maltbie, the embodiment of painstaking intelligence and applied conscience, in an effort to check the conservative majority of the Hughes commission in its headstrong course on the subway contracts.[2]

[2] What the writer thought of the subway contracts was fully set forth in an article contributed by him to the July, 1913, issue of the NATIONAL MUNICIPAL REVIEW. Unfortunately, the entire history of the New York City public service commission for several years past hinges upon the subway contracts and the negotiations and interplay of political and financial forces having relation to them. Good men differed in regard to their merits, but there is evidence that public opinion is now veering against the contracts in the light of the city's present financial distress. At any rate, in this article the writer has been compelled to assume without further argument that the contracts were not in the interest of the city, and to treat the whole tangled development largely from that point of view.—D. F. W.

Governor Dix was not the man to learn much by experience. True, when the second vacancy occurred in the commission, he did not appoint another man of exactly the Cram type, possibly because he was unable to find another such in New York City, but probably because his sympathies and the interests that had most influence with him forbade the appointment of another man who would not be absolutely "safe." At any rate he selected in place of Commissioner McCarroll, George V. S. Williams, a Brooklyn lawyer who was allied with the regular Democratic organization and some years previously had been connected in a subordinate capacity with the legal staff of the Brooklyn rapid transit company. He was a man of considerable ability and industry, but he promptly lined up with the conservative element on the commission, supported the subway contracts and has continued to give the impression of extreme friendliness for his former employer, the Brooklyn rapid transit company, and the other big corporations having business with the commission.

Chairman Willcox's term of office expired on February 1, 1913, one month after the advent of the Honorable William Sulzer in the executive chamber at Albany. William Sulzer had celebrated himself in congress and throughout the country as a "friend of the people." Mr. Hearst and the New York *World*, both vigorous opponents of the subway deal, urged upon Sulzer the necessity of appointing in Willcox's place a new man who would kill the contracts before the city should be "sold out." Meanwhile, the majority of the commission, led by Chairman Willcox, left no stone unturned in an effort to get the contracts whipped into final shape and executed by Mr. Willcox before the governor could appoint his successor. This feverish anxiety was in part due to the fear that Sulzer might listen to the advice of the radicals and appoint a chairman who would upset the subway deal entirely, and, in part, due to the fact that Mr. Willcox considered these contracts as the crowning achievement of six years of arduous labor and was, therefore, extremely eager to have the honor of signing them as an evidence to posterity of the great services he had rendered to the city of New York.

Sulzer was a Democrat engaged in the difficult political exercise of riding two horses at the same time, with the further unfortunate complication that the horses were going in opposite directions. This feature of gubernatorial life has long been an institution in New York. The people look for it as they look for the regular return of Barnum and Bailey's circus to Madison Square Garden. Only about two governors in a generation refused to take the exercise. Sulzer had announced that he himself was the leader of the Democracy in New York State and had dared anybody and everybody (with a sly look in the direction of Charles F. Murphy) to challenge his leadership. At the same time he was seeking to placate Murphy by making appointments that would be acceptable to him, especially in New York City.

It is understood that Sulzer had conceived a personal dislike for Chairman Willcox, for some reason not generally known to the public. The friends of the dual contracts—and they included most of the great and powerful in New York—were insistent in urging upon Sulzer his duty to reappoint Willcox. But Democratic precedents, as well as personal dislike, stood in the way.

After a few days' delay, the governor announced his selection for the chairmanship. It was none other than the Honorable Edward E. McCall, Tammany judge of the supreme court and brother of the late John A. McCall of New York life insurance fame. It was not generally known that Judge McCall had recently been interested in the Kings County electric light and power company, a powerful Brady corporation of Brooklyn, but it was known and acknowledged by everybody that he represented the point of view of the big fellows in Wall Street—Morgan, Ryan and the rest. Sulzer announced this appointment as a purely personal one. McCall had been his friend for many, many years, and he called upon him, in this crisis, to give up the honors and emoluments of the judgeship and accept, at a personal sacrifice, the chairmanship of the public service commission in order that the whole subway controversy might be reviewed anew by a fresh mind. It was clear that McCall would be unprejudiced by any suspicion of knowledge of the subject. It was also clear that his decision would be such as to justify the confidence which Charles F. Murphy and the great interests of Wall Street had already reposed in him. When, a few weeks later, he came to render his decision, he announced that he had been unable to find an "i" to dot or a "t" to cross in these wonderful contracts. In fact, his only objection to them was that they were too favorable to the city. He signed the contracts and announced to the rapid transit companies, who were well represented on the memorable occasion, that he would be "on their necks" every minute of the time until the construction of the rapid transit lines was completed. To the public it appears that he has been *around* their necks, instead of *on* them.

Mr. Willcox felt much put out at the bad treatment he had received from the state, and the door of the chairmanship had scarcely closed upon him before he reappeared in the presence of the commission in the rôle of counsel for the Hudson and Manhattan railroad company (owners of the McAdoo tubes) in a big capitalization case and also as counsel for the New York Edison company, subsidiary of the Consolidated gas company, in a big rate case. Shortly afterwards, Frank W. Stevens, the able chairman of the up-state commission, was retired to private life by another act of Governor Sulzer. Stevens also was stung to the quick by the ingratitude of the state and immediately accepted the position of general counsel for the New York central railroad company. Thus these two distinguished public men were "picked off" by the corporations they

had been regulating. In this connection it is to be noted that Roemer, former chairman of the Wisconsin railroad commission, recently resigned to go to H. M. Byllesby & Company of Chicago, and Edward W. Doty, the progressive member of the Ohio public service commission, was no sooner dropped in the political shuffle than he sold his services to the traction and light interests of Columbus. When so many distinguished and honorable men, left wounded on the battle-field by some shift in the forces of politics, have seen fit to accept the hospitality of the corporation ambulance, who can bring their patriotism to judgment? It is to be feared that few men on the public side really know the game, or else that "the jingling of the guineas helps the hurt that Honor feels."

With the appointment of McCall an important stage in the political history of the commission was passed. In spite of Governor Hughes's carefully laid plan to keep the commission from Tammany control, here it was in six short years with a Tammany chairman and a Tammany majority, holding their appointments, not from the mayor or people of New York City, but from Hughes's own successors in the governorship. Moreover, the time when this transfer of political control took place was one of the most critical periods in the history of the city. The public service commission, in its purely local capacity as successor of the rapid transit board, was just at the climax of many years of planning and negotiations for the expansion of the subway and elevated railroad systems. The subway contracts, involving the expenditure of $325,000,000, to be furnished in about equal parts by the city and the rapid transit companies, had arrived at their final stage preliminary to execution. Whatever else may be said of these contracts, it cannot be denied that they are the type of contracts in the execution of which Tammany takes delight. Under them the subways and their equipment are to be technically the property of the city, but they will be subject to a first mortgage held by the companies to secure the 50 per cent of the capital advanced by them. Moreover, in this case the holders of the first mortgage are to operate the property for half a century, leaving the city to protect its equity by the exercise of regulatory power vested principally in the public service commission and involving at an infinite number of points the exercise of discretion by the commissioners. When McCall became chairman and Tammany assumed control of the commission, the expenditure of enormous sums of money under the direction of the commission through a multitude of construction contractors was just getting under way.

Moreover, the public service law, while providing that the salaries of the commissioners themselves, of their chief counsel and of their secretary, amounting in all to $91,000 a year, should be paid by the state, made all other expenses incurred by the commission a mandatory obligation upon the city. The approval of the local authorities was required for rapid transit routes laid out by the commission, franchises granted and operating and construction contracts entered into, but for the current expenses of regulation and in the preparation of rapid transit plans, the commission could go to any limit in spending the city's money without the consent of the local authorities. This curious arrangement, devised originally by Governor Hughes as a guaranty that the public service commission established by him to carry out certain state policies should not be handicapped by local indifference or political hostility in performing its work effectively, had played into the hands of the very political interests from which Hughes had tried to protect the public.

A few months after McCall had been appointed chairman of the commission, he was drafted by Boss Murphy to be the Tammany candidate for Mayor of New York, in place of Mayor Gaynor, who had been denied a renomination by the famous meeting at Delmonico's where Murphy, McCall and half a dozen others had "cast lots on the garments of the city and divided her raiment among them." The Fusion candidate was John Purroy Mitchel, who, as a member of the board of estimate and apportionment, had stood firm to the end in his opposition to the subway contracts, co-operating closely with Commissioner Maltbie in this matter. District Attorney Whitman also had been a mayoralty candidate and had lost the nomination to Mitchel by a single vote. Thus, he was compelled to take a renomination for the office he then held, or else play the game alone. He decided to accept the renomination, and at this crisis, largely through the influence of Chairman McCall, he was offered the Tammany nomination for the same office. In his great disappointment over losing the mayoralty, he could see no serious objection to letting his own nomination and election be made unanimous, and so accepted the Tammany offer. In fact he scandalized a great Fusion mass-meeting by giving unqualified indorsement to the high character and qualifications of Chairman McCall, the Tammany candidate for mayor, while practically ignoring his erstwhile rival, Mitchel, the Fusion candidate. All the world knows the result of his campaign. Governor Sulzer had been impeached, not for his crimes, but for his revolt against the organization. The rage against Tammany grew into a devouring flame and McCall was beaten in a Democratic city by a plurality of 124,000.

As a result of this fateful election, Mr. McCall was enabled to continue to devote his energies to the service of the state as chairman of the public service commission. When another year rolled around, another vacancy occurred in the membership of the commission, and, thanks to the impeachment of Sulzer, another governor was in the executive chair at Albany. Mr. Glynn had made a good reputation as state controller during the first Hughes administration, but as governor he also had to ride two horses, and so when it came to the selection of another public service commissioner in the New York City district, after the usual amount of hesitation, he lighted upon Robert Colgate Wood, of The

Bronx, a gentleman who had some years previously served as president of a street railway company which had later been acquired by the Interborough rapid transit interests. In addition to this presidential experience, Mr. Wood had devoted his energies to the financing of various public utility properties in different parts of the country. His appointment appeared to be entirely satisfactory to Tammany and was not the subject of public criticism by the corporation interests. Glynn was in many respects a more efficient governor than his two Democratic predecessors, but his appointment of Wood turned out to be ridiculous in the extreme. Wood proved to be so weak that even his Tammany associates would not have mourned much if some wind out of the political desert had blown him away.

New York City now found itself blessed with a commission unanimously Democratic and, except for Dr. Maltbie, unanimously Tammany. With the advent of the Mitchel administration at the beginning of 1914, Commissioner Maltbie was offered a place in the mayor's cabinet as head of the great city department of water supply, gas and electricity. He declined this appointment and chose to hold on as a minority of one in the public service commission, where he was keeping up a stubborn fight to preserve as far as possible the standards and policies of the commission's earlier days, against the time when a shift in the political forces in the state might bring about a reorganization of the commission more nearly along the original lines. During his incumbency he had attained a national reputation as an expert in rate and capitalization matters, and at times the official reports of the commission were composed principally of his minority opinions. In some cases the Tammany majority filed no opinions, presumably because they had the good sense to know that their opinions, if they had any, would not look well in print, at least by the side of Maltbie's.

In the fall of 1914, District Attorney Whitman, still smarting from his loss of the mayoralty nomination, was triumphantly elected governor of the state on the straight Republican ticket. Whitman's success was so phenomenal that his star as a Presidential Possibility immediately appeared on the horizon. No one knew what his position might be on national issues or even on important state issues. He had no public utility record and New York watched anxiously to see what he would do with the public service commissions. In both districts and particularly in New York City, the popular discontent with the commissions and lack of confidence in their efficiency and integrity as representatives of the public interest, had become wide-spread and acute. Although Whitman had received his nomination by the direct primary system, it was known that as a young man he had been groomed and introduced into public life by the celebrated bosslet, Abraham Gruber, and it was feared by many that his acts as governor would be controlled by, or at least

in harmony with, the wishes of William Barnes, whom we may now call a boss without committing libel.

The Republican sweep had included all of the state offices and more than a two-thirds majority in both branches of the legislature. The state had been scandalized by the unspeakably weak, inefficient and spoils-seeking Democratic administrations that followed the promotion of Governor Hughes to the supreme bench. It was an occasion when, if ever, ruthless legislation and administrative reorganization would be justified, if undertaken for the much-needed purpose of putting the government of the state upon a sound and efficient basis. So far as the public service commissions were concerned, three paths were open. The governor might simply fill the vacancies as they occurred, in which case the organization Democrats, holding over from the discredited régime of the past four years, would continue in control of the commissions until after the close of the governor's present term. He could remove the commissioners on his own motion, or, the Republican legislature could provide for a reorganization of the commissions by a change in the law.

Under these circumstances, it was hoped that the governor would have the courage to assume the responsibility placed upon him by the public service law. The public believed that the first district commission as a whole was inefficient and that the commissioners, except Maltbie, were dominated by corporation influences. It was a clear case for investigation under the Moreland act[3] and removal under the public service law. It was thought that if this course were followed, the governor could do no less than to reappoint Commissioner Maltbie as a nucleus for a strong new commission, worthy of the best Hughes traditions.

The governor strongly intimated that there was to be a prompt and thorough reorganization of the commission. Instead of proceeding under the Moreland act, however, and assuming the responsibility himself, he sought to enlist the co-operation of the legislature and to put upon that body the onus of making the investigation and pointing the way to such method of reorganization as might be found necessary or possible. Accordingly, a joint legislative committee was appointed to make a hasty investigation of both commissions, and Colonel William Hayward, the governor's political manager and personal counsel, was selected as counsel for this committee.

Instead of being tender toward Chairman McCall, as might have been expected, Colonel Hayward put McCall on the stand first of the commissioners and in the course of a two-day examination put him in such an unenviable light that his summary removal by the governor seemed inevitable. His use of public automobiles for private purposes was shown

[3] The "Moreland act" is a law giving the governor of New York authority to appoint a special commissioner with great inquisitorial powers to investigate any department of the state administration.—D. F. W.

to have been scandalous. His ignorance of the regulation work of the commission appeared to be dense, and his excuse was that he had been devoting his energies from early morning till late at night to the task of familiarizing himself with the subway contracts and to the supervision of rapid transit construction under them. Then it was brought out that in the midst of his busy official life he had found time to carry on a considerable law practice from the commission's offices. McCall seemed down and out, and the newspapers and the public looked upon Colonel Hayward as a mighty hunter. Tammany inefficiency, even in the case of the great chairman, had been mercilessly exposed, and the happy day was at hand when the commission would be reorganized and New York City would be delivered of the nightmare of public service regulation by Tammany politicians. Hayward took the other commissioners one by one and gave them a civil service examination on their qualifications, their duties and their performances, particularly in the field of service regulation. New York was disgusted and delighted. Hayward set up a standard of efficiency and of strictness with the traction and lighting corporations which the commission had never attained even in its best days. Apparently, Governor Whitman was showing his hand and the fear that he would be subservient to the wishes of the great corporations in his handling of the commission problem was dispelled.

It was expected, as a matter of course, that the known courage and efficiency of Dr. Maltbie, the lone survivor of the Hughes régime, would be recognized and that the character of his record would be brought out in sharp contrast with that of his Tammany colleagues. This was what the public expected. This was what those who knew the work of the commission intimately knew would be the program of an investigating committee sincerely interested in rewarding efficiency and proven devotion to the public interest and in weeding out inefficiency and private-mindedness. This was the course which an intelligent desire to prove the superior trustworthiness and governmental efficiency of the Republican party in the state of New York would have dictated. Maltbie was saved until the last—until, in fact, Colonel Hayward and the committee had made out a strong case against all the Tammany commissioners and had carried public opinion to the point where it would unreservedly support Governor Whitman in his apparent determination to make a clean sweep. But when Maltbie was put upon the stand, it soon became evident that Hayward desired to "get" him also, although his term had expired and if the governor wished to get rid of him no charges were necessary. Maltbie's examination lasted several days. The public began to see that what the governor and the legislative committee were interested in was not so much the inefficiency of the commission *per se* as the discrediting of all the commissioners, good and bad. The public and the press generally had been urging the retention of Commissioner Maltbie

on the reorganized commission. But apparently Maltbie's strong support was displeasing to the governor, inasmuch as it tended to put him in a position where he would not be free to retire Maltbie and appoint a Republican in his place in case there should be any slip in the reorganization program. It was also well known that Maltbie had incurred the hostility of the great interests in New York, first through his strictness in rate and capitalization cases, and second by his vigorous opposition to the subway contracts. Moreover, most important of all, Maltbie was a close friend of Mayor Mitchel, and his reappointment under the circumstances would give a severe check to "government by resentment," the new fad at Albany.

When the public saw that Colonel Hayward's idea of an investigation was to "get" everybody without reference to actual efficiency and deserts, sentiment began to cool toward the investigation. Matters reached a climax when Maltbie, goaded into a passion by the investigator's insinuations against his official probity, broke out into a spectacular defense of his record and a criticism of the investigating committee's attitude. Just prior to this climax, it had been announced semi-officially at Albany that the governor intended to appoint Colonel Hayward himself as chairman of the reorganized first district commission. This apparent combination of selfish motives animating the investigation turned public opinion in the city strongly against Colonel Hayward and the committee, and in the resentment at the unwarranted attacks upon Maltbie, a certain amount of sympathy was generated for the Tammany men themselves.

The investigating committee finished its work in haste under prodding from the governor and reported that the members of the first district commission had been derelict in the performance of their duties. Maltbie's case was treated quite gingerly and his record was not severely criticized. Upon the basis of the committee's findings, the governor proceeded to prefer charges of inefficiency and misconduct in office against the four Tammany commissioners, whose terms had not expired and whose removal was therefore necessary if new appointments were to be made. The reaction in public sentiment in the city enabled the accused commissioners to rally to their own defense, which was so spirited and, under the circumstances, so effective on the mind of the governor, that instead of removing the entire group summarily, he held the matter under advisement for two months, until near the end of May, although the original program called for a new commission by March 1. In the meantime, near the end of March, he appointed Colonel Hayward in Commissioner Maltbie's place and soon afterwards selected James O. Carr, legal adviser of the General electric company in all public service commission matters, to succeed Martin S. Decker on the up-state commis-

sion. Colonel Hayward's appointment was greeted by the newspapers of New York with disgust and anger.

The Brooklyn *Daily Eagle* said:

The distinction between Maltbie and Hayward, the turning down of the one, the exalting of the other, cannot be misunderstood. An expert in municipal government, in municipal betterment, goes. An expert in practical politics comes.

Whitman's first effective act in the public service drama showed that he had chosen to follow the example of Dix, who had appointed Cram to inject "energy" into the commission, instead of the example of his great predecessor, Hughes.

The interplay of political and corporation interests, in connection with the New York commissions, has a profound significance. It goes to the very root of the public service movement of the country. It is well known that a community of sympathy and interest in the subway contracts has made a mutual admiration society of Ex-Chairman Willcox and Chairman McCall. As recently as May 19, Mr. Willcox appeared before the public utilities committee of the constitutional convention to urge that the public service commissions be given the protection of the constitution. He recommended that the term of office be made ten years and that the commissioners be given the same security of tenure that is accorded to judges of the Supreme Court. After praising Chairman McCall and the two commissions under their present political control, he is reported to have expressed himself as follows:

I can say without betraying confidence that Governor Whitman is experiencing difficulty in getting men of the proper calibre for the public service commissions. One reason is the short term and another is the fact that without constitutional protection the places are subject to political control.

This was *delicious*, coming, as it did, within two months after Whitman had deliberately sacrificed Maltbie, the expert, in order to put in his place Hayward, the politician! The bi-partisan powers of attraction brought into operation by a common interest in the subway contracts appear to be more powerful than the powers of repulsion caused by mere differences between Tammany and Anti-Tammany politics.

Finally, on May 26, Governor Whitman dismissed the charges against the Tammany commissioners, leaving his faithful lieutenant, Colonel Hayward, to "make good" his high pretensions in a commission stacked against him four to one. Until the charges were dismissed, the new commissioner talked and acted as if he expected the people of New York to believe that "one, with God, is a majority," even of a public service commission. The other commissioners ate out of his hand. But after the governor had taken his final action, the Tammany commissioners noticeably plucked up heart, and Hayward began to find himself in the minority when he became too energetic.

New York has settled down to "enjoy" its medicine. Commissioner Hayward scolds the corporations occasionally, but Chairman McCall goes on proclaiming his profound conviction that the traction magnates, gentlemen all, are working ceaselessly with only one ambition, namely, to render satisfactory service to the public. The public service corporations "got" Maltbie, which was something, and in the process kept McCall and Williams, which was something more. The gallant Colonel Hayward, Governor Whitman's crusader against the Terrible Turk, returned in triumph carrying on his spear the head of the sole survivor of the last preceding expedition. The net result of the investigation was that the pro-corporation Tammany politicians on the commission were whitewashed by the governor, while the one independent commissioner, who had made an enviable record, was dropped for a bird of another feather.

When the war is over, if it ever is over, and when the people of the United States have time again, if they ever do have time, to think of public utility problems, we shall see what we shall see. Meantime, Tammany, repudiated at the polls by the electorate of New York, both city and state, gets the bread of life from the hands of Charles S. Whitman, Republican aspirant for the presidency.

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